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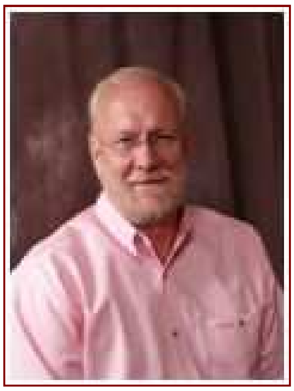
TRANSPORTATION REPORT



From: Terry Whiteside

To: The Montana Wheat and Barley Committee

Date: May 25, 2010

Canadian Farm Producers Organizations Working Together With The Canadian Wheat Board Are Calling (Petitioning) the Federal Government of Canada For a Rail Costing Review.

Rail Costing Review - The Time to Act is Now

The Canadian Federation of Agriculture was pleased recently to see a Globe and Mail article discussing the need for a rail costing review:

The CFA encourages members to send an email postcard to the Minister of Transportation John Baird and your local MP to convey the importance of having the government conduct a full costing review of the railway revenue cap as soon as possible so farmers reliant on the railway will no longer be overcharged. This issue has a huge impact on the competitiveness of Canadian farmers.

Background

The Canadian Federation of Agriculture (CFA), the National Farmers Union (NFU), Keystone Agricultural Producers (KAP), the Agricultural Producers Association of Saskatchewan (APAS), Wild Rose Agricultural Producers (WRAP) The Canadian Wheat Board (CWB) and the Western Canadian Grain Growers Association joined forces in July of 2008 calling on the government for a full railway costing review in light of the report conducted by respected rail analyst John Edsforth.

Edsforth's study estimated that the railways in 2006-07 made $175 million (or $6.25 a tonne) more than what was considered fair and reasonable compensation for moving grain under the previous Western

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Grain Transportation Act, also known as the “Crow Rate” (repealed in 1996). In 2008, the Canadian Transportation Agency (CTA) found the railways had been allowed to earn revenue that was triple their actual costs for rail car maintenance and reduced the revenue cap for grain by about $72 million per year. A gap of at least $100 million remains, while the railways appeal aspects of the CTA ruling.

Editor's Note: The STB has recognized in the U.S. that it likewise needs to review and revise its costing system which is the backbone for the Uniform Rail Costing System (URCS). The studies and regression analysis underlying the factors that go into forming the basis of URCS have not been updated since 1980 and in some cases the empirical studies go back into the late 1970's when this country had many more railroads with at least modest competition between railroads.

Central Montana Rail Won’t Survive if BNSF Shuns Its Commitment

By James Woodburn, Reprinted with Permission from Author
May 20, 2010

In several Tribune articles concerning Central Montana Rail and its dispute with Burlington Northern Santa Fe Railway, it appears BNSF is attempting to portray CMR as an adversary of area producers to maintain a positive image while it violates a commitment to provide competitive rail service to Denton and Geraldine.

In 1980 Burlington Northern agreed in a written commitment to the state of Montana to operate the railway between Geraldine and Lewistown. The commitment was fulfilled only after the state sued BN.[1]

At the time of its 1980 commitment to the state[2], BN had the opportunity to operate and maintain the railway between Geraldine and Lewistown itself and declined. It chose instead to compensate a short line railroad operator and CMR was created.

BNSF claims that its $0.26 per bushel ($884 per car) payment to CMR was “several times the market rate for such moves.”

In reality, it was only costing BNSF $0.06 per bushel more to ship from elevators in Denton and Geraldine than a shuttle elevator on their line. The payment was not based on a market rate switching

[1] The outcome of the suit was that BNSF and the State signed a "Settlement Agreement" in 1984, wherein the BNSF agreed to pay the State and its designated railroad a division (which included escalation clauses) and further agreed to maintain rate parity within four counties of Montana that surrounded the CMR (Fergus, Cascade, Chouteau, and Judith Basin). The BNSF agreed not to compete against the CMR and the State.
[2] Formalized in the 1984 Settlement Agreement

fee but the actual cost of organizing trains, delivering them to area shippers, and returning them to the BNSF mainline. The payment also funded maintenance on an infrastructure that includes 87 miles of mainline track, four large steel trestles, one mile-long tunnel, approximately 30 small wooden bridges, 39 public crossings, six locomotives, etc.

BNSF also raised the issue of rate transparency involving the Rule 11 rate structure. CMR is not currently publishing a rate according to the Rule 11 standard because it is not currently charging — and has not charged in the past — a rate to local shippers. Any additional CMR charge would make it impossible for grain elevators on the CMR line to compete with shippers on the BNSF mainline.

If CMR listed a rate according to Rule 11 it would be $0.00. Shippers and producers whose grain CMR transports understand this and have never complained about shipping rates or a lack of transparency. The payment CMR received from BNSF did not increase producers' shipping costs as evidenced by the fact BNSF has not reduced its rate since ending payments to CMR.

CMR is a nonprofit, producer-owned corporation whose mission is to provide service to local shippers and producers. The payment CMR received from BNSF allowed grain elevators on the CMR line to purchase grain at a price that could compete with elevators on BNSF's lines. The rate CMR was charging was not excessive. Its cash reserves have remained steady and adjusting for inflation, are smaller today to what they were 20 years ago.

The Montana Grain Growers Association and the Montana Farm Bureau have offered mediation in CMR's dispute with BNSF.

In earlier mediation with CMR, BNSF asked CMR to negate their original settlement agreement[3] and offered nothing in return. Agreeing to those terms would have stripped CMR of the payments and rate protection[4] that allows the smaller railroad to offer affordable, reliable rail service to Denton and Geraldine.

CMR has decided not to utilize mediation services from MGGA and the Farm Bureau because it appears both groups have a close relationship with BNSF and do not have CMR's best interest in mind.

The MGGA published an article titled "Moccasin Rail Interchange" by BNSF ombudsman Don Karls in the September 2009 issue of Montana Grain News. The article suggested that CMR was hiding charges from shippers and producers. It also ignored BNSF's interest in discontinuing payments to CMR, a move that has since happened and threatens to put CMR out of business.

[3] The 1984 Settlement Agreement
[4] Guaranteed in the 1984 Settlement Agreement between the State and the BNSF

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In August 2009, CMR manager Carla Allen declined an offer for mediation from a representative of MGGA and Montana Farm Bureau.

The primary issue in this dispute is BNSF's unwillingness to fulfill its commitment to the state, which, until recently, was satisfied with the payments to CMR and efforts to offer competitive shipping rates. Issues of rate transparency and excessive rates are simply smoke screens put up by BNSF to draw attention away from the heart of the dispute.

CMR has enjoyed a good working relationship with BNSF on the local level. In the late 1980s the BN was very generous with CMR, selling locomotives to it at bargain prices and sending technicians from Havre to train the CMR employees to operate and maintain the locomotives. Only in the last few years, since the BNSF merger and the construction of shuttle elevators, have relations been strained at the corporate level.

If BNSF continues not to honor its commitment and pay CMR, CMR's cash reserves will be depleted. BNSF's payments to CMR accounted for more than half of the small line's total income. Without this money, CMR will eventually be forced to discontinue service to producers in the Denton and Geraldine area.

CMR employs seven full-time staff members who live in central Montana and contribute approximately $300,000 in salaries to the local economy.

In 2009 CMR spent approximately $100,000 in the Denton and Geraldine area, $110,000 in Lewistown, $30,000 in Great Falls and the surrounding area and paid more than $10,000 in property taxes to the three counties they service.

If CMR fails, local producers won't be the only ones who suffer.

Editor's Note: James Woodburn is a Geraldine-area producer and serves on the Central Montana Rail board of directors.

Shippers Rally at Rail Shipper Day

A rail customers' rally held May 5th in D.C., held at the outset of a day of lobbying on Capitol Hill, was heralded by about 150 shippers conducting over 750 meetings on Capitol Hill to both educate and push for passage of S2889.

Senator and Chairman of the Commerce Committee Jay Rockefeller stated, "Keep the faith," Sen. Jay Rockefeller, D-W.Va., told the group. "You are terrific. You are right. But we are not there yet."

Senator Rockefeller has made STB Reauthorization and shipper reform act one of his chief priorities and is pushing for a rail competition bill that would shift the rules more toward shippers for the first time since 1980, when deregulation put carriers on the path to financial strength.

After spending 2009 in negotiations among rail executives, shipper groups and regulators, the committee passed a bill in mid-December. The bill, S2889 passed unanimously out of the Senator Commerce Committee on December 17th and with full support of ranking Republicans and Democrats on the Committee. The railroads have remained subdued in their support and only NS has voiced objection to the some of the bill's provisions. The House has not taken up its own version and is waiting, according to Chairman Oberstar, on Senate action on S2889 - when he sees it move, he has indicated he will move on this bill. Senators Thune and Hutchison (ranking member) have indicated that they believe the bill will pass and the railroads will get a shipper bill this Congress.

Members of the agriculture, steel, chemicals and utility customers, speakers shared testimonials about the years they have fought to get members of Congress educated about their concerns. The shippers believe that the 111th Congress will be the year that STB Reform and shipper concerns will be address and Rockefeller has a plan to get the measure done in 2010.

Rockefeller is enthusiastic and committed to getting this legislation done. “I am not tiring on this legislation,” he said. “I’m not kidding on this legislation. We have to do whatever it takes.” The Chairman also cautioned, “You’ve got to understand this is not over.” Railroads, he said, will not meet him halfway on compromises to get the bill wrapped up.

One railroad concern is that Rockefeller plans to add language in a final bill to strip carriers of a limited exemption they enjoy from antitrust challenges, which they have because the Surface Transportation Board decides most carrier-shipper disputes.

In the last 30 days, shippers got a boost and railroads a slap when an extensive Agriculture Department report on freight shipping, developed in coordination with the Department of Transportation, urged Congress to revisit antitrust exemptions for railroads and ocean ship lines. Sen. Amy Klobuchar, D-Minn., cited that report as a help to the shipper cause. Senator Dorgan (D-ND) spoke with passion about this fight and continues to push this bill forward. Chairman Oberstar spoke at the end of the day - stating when the Senate passes their bill - he will move forward on a similar bill to address shipper concerns in his Transportation and Infrastructure Committee in the House.

Sen. Herb Kohl, D-Wis., the day after shipper day, said he wouldn’t allow the competition bill to move to the Senate floor unless it removes “this special and undeserved immunity the railroad industry has from antitrust law.” Kohl last year wrote legislation to strip the exemption from rails (unanimously passed out of Judiciary Committee), and held it back from Senate floor consideration after he and Rockefeller agreed to add its terms to the broader rail regulatory bill. There had been rumors the Commerce bill might finally move without that clause in order to win railroad support, but Kohl made clear he wants the antitrust provision included in any rail legislation that moves forward.

Editor's Note: This move by Senator Kohl, may prove to be important - as it will require both Senator Rockefeller and Senator Kohl to talk member-to-member and find some resolution to getting both bills to pass.

BNSF 1Q Net Jumps 73 Percent

BNSF Railway saw its profit surge 73 percent in the first quarter from a year earlier to $506 million, as revenue grew 13 percent to $3.864 billion.

In the SEC filing it said overall freight traffic in this year’s January-March period slid 1.4 percent from a year earlier to 2.099 million units, but average revenue per unit in mid-February through March was up 15 percent from the 2009 quarter to nearly $1,800. Operating expenses rose 4.3 percent to $2.874 billion.

Court Rebuffs BNSF on Rate Case - Upholding The Largest Award in STB History

In the biggest-ever STB award to captive shipper survives main railroad challenge, BNSF Railway did not get satisfaction in fighting a major coal rate judgment against it by the Surface Transportation Board, as the U.S. Court of Appeals largely backed the STB decision. The decision was a further victory for Western Fuels, Inc and its member Basin Electric - a captive utility shipper from the Powder River Basin coal fields to its power plant located in Moba Junction, WY. Western Fuels is also a member of the Alliance for Rail Competition.

The appeals court of the District of Columbia Circuit, where plaintiffs can challenge agency rulings, deferred to the STB on most issues in a May 11 ruling.

The STB in February 2009 had determined that BNSF charged “unreasonably high” freight rates on coal shipments to the Western Fuels Association and Basin Electric Power Cooperative, and it ordered the railroad to pay about $345 million in reparations and future rate relief, the largest reparation/future rate relief in the history of the STB. The subject rates were in excess of 500% of Revenue/Variable Cost - and the threshold of unreasonableness at the STB is 180%.

That order included about $100 million the STB said BNSF would be obligated to pay for overcharges in 2004 through 2008, on six million tons of coal moved yearly from Powder River Basin mines in Wyoming to a power plant in Moba Junction, Wyo. This was, the STB said, its largest award ever to a customer whose shipments are captive to a single railroad.

This ruling affected a large area of the great plains states. The STB said because the power plant feeds into regional electricity grids, the case affects power pricing for consumers in Colorado, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, South Dakota, and Wyoming.

BNSF appealed partly on the basis of the case breaking a three-year time limit built into the STB’s governing statute for rate challenges, and over several issues linked to how the STB calculated railroad costs and allowable rates.

After the agency revamped its rules for rate cases, (changing the rules for the case after all the evidence was submitted), the STB permitted/required the shippers to re-file the original earlier complaint. BNSF argued that the STB also let shippers get away with “a blatant attempt to game” its new system of cost calculation.

But the appeals court said BNSF did not raise its statutory argument “in a timely manner before the board.” It also rejected a railroad argument against shippers’ proposed alternative shipment routing, but said the STB would need to decide how to handle another BNSF objection to the agency’s cost calculations.

U.S. Railroads Want to Cover Their Bets If Cap & Trade Limits Coal Use

This time the American Association of Railroads (AAR) in Washington D.C. asking for aid allowances if their lucrative coal business takes a hit with upcoming Cap and Trade.

If Congress pushes the energy consuming industry away from utilizing Coal, the railroads stand to be one of the big losers in the policy change for emerging energies and thus the AAR is asking Congress for a novel idea - "Contingent Allowances" for the nation's railroads.

Edward R. Hamberger, president and CEO of the Association of American Railroads, told lawmakers in the recently formed Congressional Coal Caucus one in five rail jobs is linked to coal shipments, which generate about 25 percent of total revenue for U.S. Class I railroads. "Without coal, the U.S. rail network would face a need for vast restructuring with greatly reduced capacity to invest in the nation's rail network infrastructure," Hamberger said.

Six House members from coal states and both political parties formed the new Congressional Coal Caucus - a group formed to fight pending Cap and Trade legislation and its push to limit the burning of fossil fuels. Nearly half of U.S. electricity generated in the U.S. comes from burning of coal by power plants. Clamping down on coal use will lead to reduced shipments of coal by railroads to power plants.

<u>Since some legislative proposals "risk drastic cuts in coal use," and the railroads want an "insurance policy" against the potential impact on their traffic and revenue.</u>

Editor's Note: The railroads argument is interesting - when times are good for the railroads, they urge Congress not to change anything. When times are not doing so well for the railroads, they urge Congress not to change anything. If Congress is going to change something the railroads feel will hurt their bottom line - they want Congress to 'make them whole,' through allowances and subsidies. If Congress wants to restructure the STB and provide assistance for captive shippers - the railroads do not want this change - for the economy is too weak (2010) or things are going to well (2007-2008).

Bottom line: railroads seem to argue out of both sides of their mouth.

- **Railroads argue that government intervention is necessary to insure that they earn "adequate revenues".**

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- **At the same time, railroads argue that NO GOVERNMENT intervention is necessary to limit their monopoly power!**

The U.S. Railroads have begun a campaign that they are very green - taking trucks off the roads, more fuel efficient, and yet they are saying that to move to greener fuels will be drastically detrimental to the railroads. And it in all probability it will - the answer may lie in a combination of fixes but reauthorizing a pro-active STB, treating all shippers fairly should be the first fix before allowances and subsidies. Fairness in the market place and to the captive shippers dictates it.

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